In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1413

CLIFFORD J. BROWN AND JUAN G. LOPEZ, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial in the United States District Court for the District of Massachusetts, petitioners were convicted of having conspired to receive, conceal, sell and dispose of motor vehicles moving in interstate commerce, knowing them to be stolen, and of several related substantive offenses, in violation of 18 U.S.C. 371 and 2313. Petitioner Brown was given a general sentence of five years in prison; petitioner Lopez was given a general sentence of imprisonment for three years. The court of appeals affirmed (Pet. App. A).

The relevant evidence is set forth in the opinion of the court of appeals (Pet. App. A 12-13). Briefly it showed that in the morning of September 24, 1969,

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police officers in Norton, Massachusetts, discovered three late model stolen vehicles in the middle of some woods adjacent to land belonging to petitioner Lopez. The only access to a path near which the automobiles were found was across Lopez' property. Later that afternoon, two Norton police officers, together with two officers of the Massachusetts State Police, drove onto Lopez' property and told him about the three cars. While accompanying the officers to view the automobiles, Lopez stated that he controlled access to the path and had piled brush across it to prevent its unauthorized use; he denied knowing anything about the cars in the woods. On returning to Lopez' property the officers, noting his nervousness, told Lopez that he was under suspicion and advised him of his rights. Lopez then made several telephone calls, but was unable to reach his attorney. After a conversation with his wife, he told one of the Norton police officers that he wished to talk to one of the state troopers. He told the trooper that he had purchased the three cars for $100 each from a man in a bar whose name and whereabouts he did not know. Lopez was then placed under arrest. That evening, in the presence of his counsel, he repeated the story he had given earlier.

Meanwhile, sometime after Lopez' arrest, the police summoned a tow truck to remove the three vehicles. In the process of removing brush that blocked the path into the woods, one of the officers saw a stripped Ford behind a shed on Lopez' property. When he approached it he saw the chassis of another stripped vehicle and automobile parts strewn on the ground, as

well as New York license plates and evidence that identification numbers of the stripped cars had been sought to be destroyed. The police searched in the rubbish and discovered further vehicle identification plates which formed the basis of several of the substantive counts.

The thorough opinion of the court of appeals adequately answers petitioners' contentions with respect to the admissibility of items seized on Lopez's premises and statements of Lopez given after he had received warnings under *Miranda* v. *Arizona*, 384 U.S. 436.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1972.

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